17 November 2025

Senator the Hon Murray Watt
Minister for the Environment and Water
Parliament House
Canberra ACT 2600
via email: senator.watt@aph.gov.au clare.manton@dcceew.gov.au

Dear Minister

EPBC Inquiry on the EPBC, NEPA and related Bills

Thank you for the opportunity to provide our comments on the Environment Protection Reform Bill 2025, the National Environmental Protection Agency Bill 2025 and five related bills, (**the Environmental Protection Bills**). The following letter is the Senate Inquiry Submission, together with a schedule of amendments for the five key issues we identified.

Urban Development Institute of Australia (**UDIA National**), is one of the longest established peak bodies. Our members plan, finance and deliver the lion's share of new dwellings across the housing spectrum, from affordable housing, through to at-market and master-planned communities for all Australians.

UDIA National supports Government initiatives to improve delivery of environmental assessment and approvals. This means establishing a streamlined, single, simple environmental assessment system that coordinates Federal and State requirements, to avoid unnecessary duplication.

Our members **support the Environmental Protection Bills with a handful of crucial amendments, to prevent drafting conflicts from undermining core Government objectives.** Detailed amendments are available in the attached schedule however the critical changes are below.

We support Ministerial delegation (with direction by the Minister), for approvals and assessments. - It is important to ensure the EPA demonstrates (under Ministerial delegation) its ability to effectively balance environmental, economic and social issues in assessments and approvals.

We whole heartedly agree with the Minister's Press Club statements – *"You don't have to choose between the environment and jobs and business. We can protect and improve our environment, **while removing duplication and speeding up approvals."***

Housing Industry Reform Expectations

UDIA members need predictable, clear and efficient EPBC assessment processes to resolve significant and costly delays for projects. These costs directly escalate prices for homebuyers.

The UDIA National Housing Pipeline data on roadblocks to housing delivery, show that **37% of available housing supply in major capital cities is constrained by** one or more issues - **67% of these constrained holdings, face environmental approval delays.**

Nationwide, assessments and **approvals can take, on average, between 1 & 5 years depending on the state.** There are **upwards of 42,000+ houses held up by delayed approvals.** (310,000 potential Victorian houses are also without a pathway while environmental issues are being resolved).

A predictable, streamlined, single, simple environmental assessments depends on four vital factors:

1. **Clear environmental definitions with well understood application** – Industry estimates, up to 60% of time on assessments relate to ill-defined & subjective discussions on impacts & offset gains.

2. **Well understood Offset requirements with an efficient pathway** through avoidance and mitigation hierarchies – many projects simply cannot avoid or mitigate impacts but can offset.
3. **Actual streamlining of Assessment processes & State Accreditation** – one process with minimal information requests, where proponents know the exact information required & necessary criteria.
4. **Well defined review processes, KPI's and metrics** to measure performance of the EPBC process – accountability and transparency that allows refinement of assessments and approvals.

The industry's aims align well with the Minister's three stated pillars for environmental reform:

- Preserving what's precious by **strengthening environmental protection** and restoration.
- Delivering a power surge for productivity through **quicker project assessments and approvals.**
- Enshrining **greater accountability and transparency in environmental decision making**.

We have used the three pillar intentions as the basis for any amendments we recommend below.

Given the extremely tight timeframe turnaround for a 500 page set of amendments, our experts cannot be certain we have captured all the issues nor can members be certain whether the Government amendments will work as intended.

We have however identified 5 critical issues that are inadvertent drafting errors:

1. **Conflicting & circular definitions will inadvertently create more confusion & subjective negotiations,** undermining faster assessment. It also sets up differential state treatment, constricting accreditation.
2. **"avoid, mitigate and offset" drafting conflict in the MNES Standard and the proposed EPBC Act** – we must align to the Act's approach for considering avoidance to prevent derailing assessments.
3. **Assessment timelines will be undermined without tighter Request for Information** (RFI's) rules and upfront confirmation of documentation requirements.
4. **Conflicting drafting on "delegation" and "direction of powers" between the EPBC and EPA Act** means there is no review or accountability for EPA performance on delegated Ministerial powers.
5. **No 12-18 month transition period review of these complex new rules** to make sure that any unintended consequences can be identified and rectified.

Fortunately, all of these inadvertent errors are easily solved by simple changes to the drafting along with greater detail under standards & guidelines, regarding application of assessments & approvals.

Making the Environmental Protection Bills work effectively

The amendments outlined below are specifically to address the five critical issues and **relate to unintended impacts from conflicting drafting across the bills,** and **drafting that undermines other objectives of the reforms**:

1. **Definitions: Conflicting drafting undermines streamlined assessment and state accreditation.**

The definitions for unacceptable impacts, significant impairment and net gains are unclear and very subjective – The unintended consequence is that the definitions can apply to any impact (if there is no suitable guidance on their application).

The Minister's Press Club statements make it clear this criteria is designed to provide a definition to enable a "quick no" on clearly unacceptable uses:

"The unacceptable impact criteria will set clear, up-front and transparent criteria for impacts that cannot be approved, enabling clear decisions early in the process.

What this means is that if someone wants to build an apartment block in a Ramsar-listed wetland, or mine Uluru, they'll get a quick no. Saving them time and money, not to mention saving our special places."

The purpose of the test criteria is to "knock out" clearly unacceptable proposals early, not sift through all projects to determine *how acceptable they are*. Unfortunately, the definitions do not set up an initial, "quick knock out" step.

We are sympathetic to the Department and drafter's dilemma in designing this criteria – We understand they have tried to design multiple qualifiers to ensure it applies to the most extreme cases, but requests for more refinement, lead to more definitions, that end up adding complexity rather than clarity.

Without definitional amendment (and guidelines/standards) on the application of the definitions, proponents/officials will continue to have unproductive "back and forth" negotiations, defeating streamlining.

The fundamental problem is that assessment and approvals are (rightly), delegable by the Minister to the NEPA and the agency officers will be looking for clear guidelines on how to apply the web of definitions in the criteria test. With the introduction of a large number of new terms, past precedent (unless specifically stated), cannot be relied upon from the old Act definitions. This is a new era of environmental reform.

Equally, the Department has previously confirmed that they rely on the rules, legislation and strategic/regional plans to "balance environmental, economic and social issues" rather than exercising their own discretions to balance these considerations under the rules. They (rightly), point out, that they do not have the expertise on economic and social issues to make this call, so look at the issue from an environmental lens only.

We understand this approach, since only the Minister has the experience and expertise to balance environmental, economic and social issues related to project proposals. Critically, however, balancing these considerations on a per-project basis **is** necessary as the environmental impacts will be considered case by case as well. The application of the unacceptable impacts criteria to the State/Territory accreditation process, as currently drafted, will also likely risk restricting the application of the Commonwealth standards of protection at a State level – effectively applying a different standard than would be applied to a Commonwealth decision in relation to the same action.

This means the proposed EPBC Act will unintentionally force proposals to fail to gain approval, that would otherwise be acceptable on the Commonwealth's criteria.

The accreditation criteria set out in s46(3)(h) and associated undertaking referred to in s48A(4) (along with related provisions in ss35(2)(d) and 58(2)(e)) refer to the definition of unacceptable impacts in s527F rather than all of the elements of the unacceptable impacts test in s136B.

The implication of this is that the limitations/exemptions applied to Commonwealth decisions (like national interest proposals and taking conditions into account) are not applied in the context of State decisions or accreditation requirements (rightly so in the case of national interest considerations).

We understand from our discussions that there is a provision to exempt an action from assessment under an accredited process (avoiding the operation of section 71A) where determined to be a national interest proposal – we have not seen this amendment to date. In any event, it is unclear how an action can be declared a national interest proposal if a State process is accredited or how the State and Commonwealth assessment and approval processes will interact in these circumstances.

Where a state process is required to align with the proposed unacceptable impacts criteria, **this can either:**

1) **prevent accreditation** (a key pillar of the reforms) or
2) **prevent proposals** (that have an EPBC Act specific exemption), **being assessed and approved through an accredited state process**.

The same can occur for other tests that can be excluded by the national interest proposal if assessed under the Commonwealth framework (e.g. not inconsistent with national standards).

The definition of "seriously impair" refers to "seriously altered for the worse", which is circular and unhelpful. The definition of "critical habitat" requires decision makers and officers to define what is "necessary" habitat for foraging, breeding, roosting or dispersal of threatened species (a highly discretionary and potentially very low threshold in this context), and "irreplaceable" includes reference to a "relevant" timeframe and location.

These definitions add to confusion and complexity that will further harm faster assessments. With all three definitions relied on in a single unacceptable impacts criteria (e.g. for threatened species), the **layers of uncertainty can accumulate**.

It is impossible to confirm that the unacceptable impacts criteria and the definitions in the Proposed Act will work as intended without the time to assess it against common examples – the detail is best provided in Standards and guidelines with a more universal definition in the Act.

We agree with the concept of "a quick no" to proposals that could never be approved. However it is a strong power that removes a person's usual right to have a project assessed against the applicable criteria, and so **it must be exercised with particular care and controls**.

Critically, there is one solution that will help the definitions become more workable and also ensure an appropriate balance of environmental, economic and social issues.

Where the NEPA considers that a proposal may present an unacceptable impact, the proponent should have the option to request that the Minister make the final decision.

While the definitions will still need refinement and guidance on their application in Standards, some of the pressure may be removed off the unacceptable impacts criteria test if the final decision is not made by a delegate officer.

A. **Amend the s74B power to allow for referral to the Minister to decide that a proposed action is clearly unacceptable based on information in the referral (for decisions under delegation).**

Notice of a proposed unacceptable impacts decision by NEPA would be given first and the proponent can elect to have the final decision made by the Minister. We suggest that there are a few ways this could be achieved:

a. Amend the delegation power in s574 of the Bill (amending s515(1A) of the Act) to exclude delegation of the power in s74B to decide that a referral is clearly unacceptable and/or the power in s74D to reconsider such a decision.

OR

b. Amend s74C of the Act so that, where the decision is being made under delegation (by someone other than the Minister), (a) notice is first given of an *intention* to make a decision that a referral would have an acceptable impact (rather than notice of the final decision having been made) and (b) the proponent may elect to have the final decision made by the Minister (not under delegation).

B. **Replace the unacceptable impacts criteria set out in s527F and all associated definitions with a simplified test that is less dependent on layered definitions, with any further details provided in Standards and guidelines.**

The simplified test would state in one place that a significant impact is an unacceptable impact if the residual impact will, or is highly likely to threaten continued survival of a species, or cause permanent and irreplaceable loss of protected critical values, or cause permanent and irreversible damage to the integrity of a protected water source. Critical values can be succinctly defined as relevant to matters of national environmental significance. We can provide extra detail of suggested drafting if this would assist.

Additional detail/guidance on applying the definitions should be provided in the standards and supporting documentation.

C. **Ensure that State/Territory accreditation, assessment and approval processes allow for potential approval conditions to be taken into account when applying an unacceptable impacts test:**

Add references to "taking into account any conditions to be attached to an approval" to sections 46(3)(h), 48A(4), 35(2)(d) and 58(2)(e).

D. **Further consideration required of the interaction between State/Territory legislative frameworks, the accreditation process, bilateral agreements, national interest proposals and national interest exemptions, to ensure accreditation is realistic and capable of effective implementation.**

2. **Mitigation Hierarchy: The MNES Standard conflicts with the proposed EPBC approach to "avoid, mitigate and offset", and undermines streamlining assessments.**

The proposed EPBC Act applies avoidance, mitigation and offsets in a way that is workable for industry, including in its reference to "appropriate measures" in s134(3F). The proposed MNES Standard and the associated Policy Paper seem to be trying to align with the proposed EPBC Act but there is inconsistent drafting.

Some minor amendments are necessary to ensure that the drafting does not leave open the possibility that avoidance and mitigation actions must be taken (irrespective of whether they are appropriate - rather than appropriately considered). Otherwise the Standard will, unintentionally, create conflicting thresholds and potentially stop housing projects that have already taken all possible steps to try and avoid and mitigate impacts.

It is not always possible or appropriate to take avoidance mitigation and repair measures within the scope of the referred impact site before offsetting any residual significant impacts (eg: on constrained sites) – especially where avoidance and mitigation has already been taken into account in state/territory zoning, strategic plans and/or assessment and approval pathways, so further avoidance/mitigation is not possible or necessary.

Specifically the problem is in the failure to refer to "appropriate" measures in all Steps of Principle 1, and the different wording picked up regarding avoidance vs mitigation.

The Step 1 Avoidance criteria in Principle 1 (at clause 8(2)) includes 'if possible' at the beginning of the subsection. Step 2 and Step 3 do not include the words 'if possible' at the beginning of the subsection. None of Steps 1, 2 or 3 refer to 'appropriate measures'. We do agree the intention of the steps is to make it clear you do not have to absolutely avoid, mitigate or repair before you offset (you just need to go down the steps and do if you can do).

We are aware from discussions with the Department that the wording of the Act and the intention for the mitigation hierarchy to only require a consideration of any appropriate avoidance and mitigation, before deciding on offsets, is correct. We request this inconsistency is rectified in the final version of MNES Standard.

A. **Confirm as a part of MNES policy that the final MNES Standard will state appropriate avoidance, mitigation and repair measures are to be considered (and are not mandatory) before offsetting impacts can be undertaken.**

B. **Make simple amendments to Principle 1 of the MNES Standard to align it with the proposed EPBC Act:**
Adding:

a) *'appropriate measures'* in Steps 1, 2 and 3 - at clauses 8(2)(3) and (4) – and

b) *'if possible'* in clauses 8(3) and (4).

C. Amend s134 (3G)(c) on residual significant impacts to take into account planning and other instruments that may have already dealt with avoidance/mitigation:

(c) whether any other planning, assessment or approval processes are applicable or relevant to the action and have already considered and provided for the avoidance, mitigation or repair of any impact or damage as part of those processes.

3. **New Streamlined Assessment: Timelines undermined without tighter controls on multiple Requests for Information (RFI's) and upfront clarification on documentation requirements.**

Although the new rules require reasons to be given for each RFI, the current delays in assessments can be significantly reduced if Proponents have details of the information required with the application and RFI's are kept to a minimum.

While requests for information are useful to clarify applications, they have been used to require Proponents to do things as simple as changing the name on the application. With "stop the clock's" in place during RFI's the true penalty from request delays is hidden from the overall statistics.

We are also concerned about removal of the existing low-impact assessment pathways (eg: "assessment on referral information" or "assessment on preliminary documentation") which work well for lower impact proposals and simply require guidance on information required from proponents. The removal of the 'lighter touch' assessment pathways, suitable for the lowest impact proposals, will have the effect of automatically streamlining a large number of proposals into a single assessment pathway that will naturally need to cater for the assessment of more complex proposals.

A. Amend s76 to ensure the second and subsequent RFI's must be with the consent of the proponent with the option to escalate to the Minister or proceed without the RFI:

Amend section 76(1), (3) and (4) to clarify that these provisions relate to a single request from the Minister (the first request) which may only be made once.

Include a **new subsection which deals with subsequent requests for information**, for example new subsection (7A):

"(7A) The Minister may, following the receipt of information provided in response to the request under subsection (1), (3) or (4), make further requests for information to the person proposing to take an action (a further request), where:

a) the Minister is satisfied the further information is reasonably necessary to make the decision for which it was requested;

b) the Minister has given [reasonable OR not less than 14 days] notice to the person of the Minister's intention to make a further request; and

c) the person proposing to take the action consents in writing to the Minister making the further request."

Include a **new subsection that deals with situations where the person proposing to take the action does not consent** to the further request

"(7B) If the person proposing to take the action does not consent to the Minister making the further request under section 7A(c), the person may:

a) where the request has been made by a delegate of the Minister, request that the Minister determine whether or not the further request is reasonably required to make the relevant decision; or

b) request that the relevant decision be made without the information that would have been the subject of the further request."

"(7C) If, following the process under section 7B(a), the Minister determines the further request is reasonably required to make the relevant decision, the person proposing to take the action must either:

a) consent in writing to the further request being made; or

b) request that the relevant decision be made without the information that would have been the subject of the further request."

B. **Proposed EPBC Act to confirm new streamlined assessment will confirm documentation requirements up front with the following amendment:**

"93A Information requirements for streamlined assessment

Where the Minister has decided under section 87 that the relevant impacts of the action must be assessed by streamlined assessment, the Minister or the designated report writer must, as soon as reasonably practicable after the making of the decision, provide the person proposing to take the action with a list of the information required to undertake the streamlined assessment."

C. **Maintain existing streamlined assessments either for an extended transitional period or indefinitely:**

1) under the current Division 3A (on referral information) and

2) under the current Division 4 (on preliminary documentation),

with guidelines on information requirements for proponents.

Where the existing streamlined assessments are to be kept for a transitional period, this could be achieved by a savings and transitional provision.

4. **Lapsing non-controlled issues: Inadvertent impact on 5 year lapsing dwelling projects risking critical housing projects having to restart assessment & delay housing projects by years.**

Under the Proposed EPBC Act, not-controlled action decisions will lapse after 5 years and there is no way for the time to be extended. Previously, there was no lapsing of the decision. This means there is an inadvertent impact that a project, delayed for issues including change of ownership or delays in unrelated assessment pathways, , will lose their ability to deliver housing and need to go through the lengthy process all over again. This will delay critical housing supply.

a. **Increase the initial lapsing date for the decision, and/or allow for an extension of the decision under s79F:**

(4) The Minister may, by written notice, extend the lapsing date for a decision under section 75, if in the Minister is satisfied it is appropriate to do so.

(5) Prior to the lapsing date in subsection (1) or (4), a person proposing to take an action may request an extension to the lapsing date. An application under this subsection must outline the reasons for the request.

(6) Upon receiving a request under subsection (5), the Minister must decide whether or not to approve the request and give written notice of the decision, with the revised lapsing date, if applicable, to the person proposing to take the action

b. **In the alternative, change the lapsing date to 10 years instead of 5 years under s 79F(1)**

5. **Review of Performance on delegated responsibilities: Conflicting drafting between the EPBC and EPA Act – All delegated powers should be under the direction of the delegator and reviewable.**

The Proposed EPBC Act reforms make it clear that the EPA CEO is independent on any compliance and penalty issues but must act under direction of the Minister for any delegated powers or functions related to assessments and approvals (S515AAA EPBC Act).

In a potential conflict of legislation, the EPA Act unintentionally implies that the EPA is fully independent and cannot be directed by the Minister on delegated powers and functions in contravention of the Act.

Inadvertently, the proposed EPBC Act reforms do not give the Minister (or any other authority), the ability to review performance on delegated powers and functions during the tenure of the

EPA CEO – this would mean the EPA CEO could not be directed, reviewed or managed in relation to powers that are merely delegated – this is authority we would not give to an elected official much less an agency.

Equally, there is no circumstance in which the EPA CEO can be terminated for professional misconduct or professional non-performance of any kind during their tenure.

There needs to be strong accountability measures for the new EPA and its CEO.

This includes addressing major failures to meet statutory timeframes, poor administration of the EPA, or to re-dress major bias.

We agree that an independent EPA needs to be able to act without political pressure; however, that does not mean there should be no accountability nor transparency regarding EPA and CEO actions.

This is a fundamental premise of good governance – lack of accountability and transparency encourages poor decisions, no matter how disciplined the organisation is to start.

There are relatively simple solutions for the inadvertent errors.

a. **Amend sections of the EPA Act to clarify independence (s14), statement of expectations (s16(2)), to confirm at the end of each, that the Minister can provide instruction to the CEO on delegated powers and functions:**

   "except for powers and functions delegated by the Minister or other delegators."

   The CEO response (s17(2) should add that the CEO must address the Minister's instruction to the CEO on delegated powers and functions::

   "(c) specifically address any expectations related to powers and functions delegated by the Minister."

b. **Minister to guide the EPA CEO in balancing economic and social issues with the environmental for any delegated powers and functions only:**

   "515AAA Delegation to CEO or member of staff of NEPA
   ...
   Directions to delegates
   (5) A delegate is, in the exercise or performance of a delegated power or function, subject to the directions of the delegator.
   (6) Without limiting subsection (5), the Minister may give written directions to a delegate as to how the delegate is to approach, balance or weigh the considerations for approvals and conditions under Subdivision B of Division 1 of Part 9."

c. **Amend the Termination of Appointment clause (s52) to insert that the CEO can be terminated for professional non-performance on delegated powers & functions:**

   "(aa) for poor performance of the CEO against any requirements, objectives, metrics or directions given by the Minister or provided in this Act or any other Act or the regulations, or provided in any instrument of delegation in relation to any delegated functions or powers."

d. **Amend s61 Periodic reviews of NEPA (s61(3 to 5) to allow for review every year against delegated responsibilities:**

"Frequency of reviews

(3) The first review must be completed within 12 months after the commencement of this section (the first review).

(4) The second review must be completed within 3 years after the completion of the first review (the second review).

(5) The third review must be completed within 2 years after the completion of the second review (the third review).

(6) Each subsequent review must be completed within 5 years after the completion of the previous review.

(7) Notwithstanding subsections (3) – (6), a review must be completed no later than 3 months prior to the expiry of the period referred to in section 45(5)."

e. **Amend s61 Periodic reviews of NEPA (s61(2)(c) to include a review of performance on delegated responsibilities:**

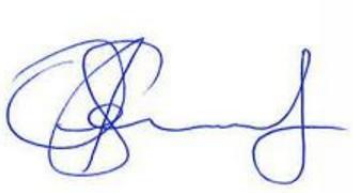
"(d) whether, and to what extent, the CEO and NEPA have complied with or delivered against any requirements, objectives, metrics or directions given by the Minister, or provided in this Act or any other Act or the regulations, or provided in any instrument of delegation in relation to any delegated functions or powers."

6. **There is no transition period for review of these complex new rules** to make sure that any unintended consequences associated with the drafting of reform package are identified and resolved, there should be a review of any new requirement and provisions within the first 12-18 months of operation.

We are keen to discuss these issues with you at your earliest convenience.

Please do not hesitate to contact the UDIA National Head of Policy and Government Relations - Andrew Mihno on 0406 454 549 to discuss this submission.

Yours sincerely



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APPENDIX 1: Detailed Additional amendments needed

Priority	Issue	Comments and recommendations	Drafting notes
Statutory tests & considerations			
	Unacceptable impacts test undermines Accreditation. The test is not subject to the same limitations and exemptions when applied to State/Territory frameworks. Risk: **States/Territory frameworks will not be capable of accreditation** and/or where the unacceptable impacts test is applied to State frameworks, **proposals that can be approved under the EPBC Act may become incapable of approval under the State framework.**	Sections 46(3)(h) and 48A(4) (and associated ss35(2)(d), 36H(2)(c), 58(2)(e)) provide that a State framework can only be accredited, and a related bilateral agreement agreed, if actions will not be likely to have unacceptable impacts on a protected matter. As drafted, this obligation will apply a higher standard at State level than under the EPBC Act because the exemptions that apply to a decision under the EPBC Act (eg national interest proposal) cannot be applied if the same proposal is assessed under the State/Territory framework, and no provision is made for taking conditions into account where the unacceptable impacts test is applied to the State/Territory (eg compare s46(3)(h) to s136B). If the same obligation not to approve unacceptable impacts is applied at State level without those exemptions/provisos, then a project may be prevented from proceeding at all because the State cannot approve. The obligation to apply the unacceptable impacts test at State/Territory level also has significant implications for the likelihood of accreditation. How is such an obligation to function in practice, particularly in circumstances where the State system is discretionary (eg WA – no express obligation not to approve unacceptable impacts). Arguably, a requirement to apply the National Standards should be sufficient to meet the desired environmental outcome because the Standard should clarify impacts that are 'unacceptable'.	1. **Further consideration required of the interaction between State/Territory legislative frameworks, the accreditation process, bilateral agreements, national interest proposals and national interest exemptions, to ensure accreditation is realistic and capable of effective implementation.** 2. **Ensure that State/Territory accreditation, assessment and approval processes allow for potential approval conditions to be taken into account when applying an unacceptable impacts test** Add references to "taking into account any conditions to be attached to an approval" to sections 46(3)(h), 48A(4), 35(2)(d) and 58(2)(e).

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Unacceptable impacts criteria undermines streamlining assessments

The criteria in section 527F are untested and the threshold is open to many interpretations (low thresholds that are too low and exclude almost everything, through to higher thresholds – depending on interpretation).

This will create more unproductive back and forth negotiations in assessments.

Risk: Proposals that are not 'clearly unacceptable' will **trigger the unacceptable impacts threshold and be incapable of full assessment or approval**

When read with the incorporated defined terms (see next issue for further discussion of the definitions), **some of the unacceptable impacts criteria impose a threshold that is too low and, not aligned with the 'clearly unacceptable' or 'critical safeguard against irreversible loss' policy intent**. For example:

- The unacceptable impacts criteria for listed threatened species (regardless of the category of vulnerability) will be triggered by an impact that is likely to seriously alter for the worse, the ability of a species to both survive and (positively) recover in the wild in a particular region. OR an impact like to cause serious damage to **necessary** foraging habitat, necessary for the species to **recover** in a **region**. **That can cover any action – they all have a "possibility" of serious impact because they "impact" it.**

Reliance on highly discretionary terms such as "serious damage" and "seriously alter", as well as "necessary" and "relevant", means the **criteria on their own do not meet the policy objectives of clarity, transparency, consistency and certainty**. In addition to the level of discretion, the choice of words (in particular 'serious') leaves significant scope for the criteria to be applied in a way that prevents the assessment and approval of many projects not intended to be captured within the concept of 'clearly unacceptable'.

Critically, no-one has had time to test the proposed criteria against real examples, so the risk of unintended consequences is high.

Without time to consider each of the unacceptable impacts criteria for each MNES, the risk is high that the definitions do not balance environmental, community and social imperatives.

1. **Amend the s74B power to allow for referral to the Minister to decide that a proposed action is clearly unacceptable based on information in the referral (for decisions under delegation).**

   Notice of a proposed decision would be given first and the proponent can elect to have the final decision made by the Minister. We suggest that there are a few ways this could be achieved:

   a. Amend the delegation power in s574 of the Bill (amending s515(1A) of the Act) to exclude delegation of the power in s74B to decide that a referral is clearly unacceptable and/or the power in s74D to reconsider such a decision.

   OR

   b. Amend s74C of the Act so that, where the decision is being made under delegation (by someone other than the Minister), (a) notice is first given of an *intention* to make a decision that a referral would have an acceptable impact (rather than notice of the final decision having been made) and (b) the proponent may elect to have the final decision made by the Minister (not under delegation).

2. **Adopt a universal unacceptable impacts criteria in the Act and detailed application provided in Standards and guidelines.**
   The simplified test would state in one place that a significant impact as an unacceptable impact if the residual impact will, or is highly likely to threaten continued survival, or cause permanent and irreplaceable loss of protected critical values or cause permanent and irreversible damage to the integrity of a protected water source.

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Additional detail/guidance on applying the definitions should be provided in the standards and supporting documentation.

"A significant impact is an unacceptable impact if it is a residual significant impact that will, or is highly likely to:

(a) threaten the ability of the protected matter to continue to survive in the wild; or

(b) cause permanent and irreplaceable loss of the critical values for which the matter is protected; or

(c) cause permanent and irreversible damage to the integrity of a protected water resource, to the extent that critical human water needs can no longer be provided or a site of regional or national ecological significance cannot be maintained.

This should be supported by the following definition:

Critical values: *means:*

(a) in relation to a World Heritage property, National Heritage place, Commonwealth Heritage place or declared Ramsar wetland, the biological, cultural, or natural features which are critical to the basis on which the protected matter was included in the List (e.g. Outstanding Universal Value of heritage places, ecological character of Ramsar wetlands); or

(b) in relation to the environment in the Great Barrier Reef Marine Park, the biodiversity and heritage values that are critical to the environment of the protected matter; or

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Priority	Issue	Comments and recommendations	Drafting notes
			(c) *where the matter protected by a provision of Part 3 is the environment, the biological, ecological, biodiversity, cultural and natural features that are critical to the environment impacted.*
	Defined terms supporting Unacceptable impacts undermine clarity for faster assessments. Many of the defined terms relied on in the unacceptable impacts criteria (s527F) do not provide additional clarity, and the number of definitions relied on in the criteria, (some with further embedded defined terms), are difficult to follow. Risk: Instead of providing the clarity and certainty sought by the reform, many of the **definitions incorporate additional ambiguity and uncertain discretion, whilst also risking unintended consequences** through their application in the unacceptable impacts criteria.	Although not a comprehensive review in the time available, we have set out some of our concerns related to the **definitions relied on in the threatened species unacceptable impacts criteria, which do not provide clarity or certainty for business, decision makers or the community.** **Once impact assessment is delegated, an environmental officer will be looking for guidance on interpretation and in absence of that information, will (reasonably), take the most conservative view – in which case, strict reading of ambiguous terms means almost any action will fail the test or be in protracted and unproductive negotiations.** **It sets up a problem the officer cannot solve.** The definition of "*seriously impair*" – in particular the words "seriously altered for the worse" – does not clarify the term's meaning. The intent behind the unacceptable impacts criteria is to provide clear rules for proponents, decision makers and the community, however the addition of this defined term just adds another unclear, discretionary term (i.e. "*seriously*") to an approvals framework that already includes the similar but different term, "*significant*": • *The most important aspect of the defined term, from the perspective of the unacceptable impacts test, is the word "seriously", and it is used in both the defined term and the definition.* • *The word "seriously" does not suggest a high threshold.* • *The common meaning of "seriously" is not clearly different to a "significant" impact. As that is the threshold for referral,*	**Can be solved by a universal unacceptable impacts criteria along with Ministerial referral of the decision that an action is an unacceptable impact.** **See above.**

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"significant" should have a distinctly different meaning (with a distinctly lower threshold) from "seriously" in the context of an unacceptable project that cannot under any circumstances be approved. In our view the distinction is not sufficiently clear in the Bill and "seriously" does not accurately reflect the policy intent of a critical safeguard against irreversible loss.

- *Provision for the matters listed in subsection (2) of the definition of "seriously impair", to be taken into account in the consideration of (1), does not provide further clarification of meaning. The listed matters are simply features of an impact that, we expect, would always be considered when considering the significance of an impact. Reference to them does not provide a relevant threshold or any other assistance to a decision maker in determining how these matters should be assessed differently for an action that will 'seriously impair' as compared to one which will 'significantly impact'.*

The word "*serious*" is also used in the undefined term "*serious damage*". It is unclear what would constitute "*serious damage*", or how this differs from "*significant impact*" or "*seriously impair*"/ "*seriously altered for the worse*", or why "*seriously impair*" is defined but "*significant impact*" and "*serious damage*" are not.

The definition of "*viability*" also incorporates a lower threshold by including the words "*and recover*" and "*in a particular region*". As drafted, an action that is likely to *'seriously alter for the worse*' the ability of a species to recover in a particular region will constitute an unacceptable impact, even where the action is not having an impact on a species' ability to survive in the region or beyond, or the species' broader recovery outside the particular region. **This is contrary to the intention of the unacceptable impacts approach.**

The word "*necessary*" is included in the definition of "*critical habitat*" and in the text of the threatened species unacceptable impacts criteria. In the definition, the bar for what constitutes critical habitat

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		is low, as it includes habitat that is "*necessary*" for foraging (for example). It is unclear what would be considered necessary in a specific context. **Without guidance, any action impacting foraging could fail the test.** The definition of "*irreplaceable*" involves a significant level of discretion, as what would constitute a "*relevant timeframe and location*" is not readily apparent from the draft law. **This level of discretion without guidance or standards will lead to inconsistent decisions and undermine predictable, streamline assessment on projects that otherwise would not be considered a problem.**	
	Removing "light Touch" streamlining options limits flexibility. Removal of existing lower level assessment approaches takes out that have streamlined requirements Risk: Only **one streamlined pathway is less accessible for low impact proposals** - forcing projects into costly and time-consuming Environmental Impact Statement (**EIS**) pathway	Existing "referral information", "preliminary documentation" and "public environmental review" assessment approaches are replaced by one streamlined assessment. The only other alternative pathway will be EIS - currently the highest level of assessment (other than inquiry) under the EPBC Act. **This reduces flexibility rather than increasing it** (as a core objective of the assessment framework) -It takes away options from decision makers that work well for lower impact proposals. Removal of the 'lighter touch' assessment pathways, (suitable for the lowest impact proposals), will automatically force a large number of proposals into the single assessment pathway that will need to cater for assessment of more complex proposals. Where activities that do not meet eligibility streamlined pathway requirements do not necessarily warrant an EIS. Flexibility in assessment pathways must be retained in the system, reflective of the broad nature and scale of activities that come within the remit of the EPBC Act.	**1) Maintain existing streamlined assessments either for an extended transitional period or indefinitely:** 1) under the current Division 3A (on referral information) and 2) under the current Division 4 (on preliminary documentation), with guidelines on information requirements for proponents. **Where the existing streamlined assessments are to be kept for a transitional period, this could be achieved by a savings and transitional provision.** **2) Proposed EPBC Act to confirm new streamlined assessment will confirm documentation requirements up front with the following amendment:** *"93A Information requirements for streamlined assessment* *Where the Minister has decided under section 87 that the relevant impacts of the action must be assessed by streamlined assessment, the Minister or the designated report writer must, as soon as reasonably practicable after the making of the decision, provide the person proposing to take the action with a list of the information required to undertake the streamlined assessment."*

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Application of the mitigation hierarchy inconsistent between EPBC and MNE Standard Policy

The MNE Standard wording may imply avoidance/mitigation/ repair action must be taken before offsets can be considered – this is in conflict with the Act which more reasonably requires proper consideration of appropriate avoidance/mitigation/repair measures (which may or may not be possible).

Risk: If actual avoidance, mitigation and repair measures are mandatory in all cases before offsets can applied, **some projects that should be capable of approval will not be able to rely on offsetting to pass the net gain test.**

This is particularly high risk for developments on smaller, constrained land parcels with limited scope (if any) to take further avoidance or mitigation within the site (especially if the action was taken earlier as part of planning instruments.

Relevant provisions: clauses 230 and 588 of the Bill (s134(3F), (3G); s527J definition of "residual significant impact").

The proposed EPBC Act applies avoidance, mitigation, repair and offsets in a way that is workable for industry.
Unfortunately, although the proposed MNES Standard seems to be trying to align with the proposed EPBC Act, the actual wording leaves room for doubt – the drafting leaves open the possibility that avoidance and mitigation actions must be taken (irrespective of whether they are appropriate - rather than appropriately considered).

This, unintentionally, **creates conflicting thresholds and potentially stopping housing projects that have already taken all possible steps.**

Specifically the problem is in the failure to refer to "appropriate" measures in all Steps of Principle 1, and the different wording picked up regarding avoidance vs mitigation.

The Step 1 Avoidance criteria in Principle 1 (at clause 8(2)) includes 'if possible' at the beginning of the subsection. Step 2 and Step 3 do not include the words 'if possible' at the beginning of the subsection. Steps 1, 2 or 3 do not refer to 'appropriate measures'.

It is not always possible or appropriate to take avoidance mitigation and repair measures within the scope of the referred impact site before offsetting any residual significant impacts (such as constrained sites) – especially where avoidance and mitigation has already been taken into account in state/territory instruments before zoning, so further avoidance/mitigation is not possible or necessary. The relevant avoidance may result in siting of the

1) Confirm MNES Standard Policy changed to align with the EPBC Act where avoidance, mitigation hierarchy must be considered (and are not mandatory), before offsetting impacts can be undertaken.
2) Consider all relevant Information - Include a new s134 (3G)(c) on residual significant impacts to take into account planning and other instruments that may have already dealt with avoidance/mitigation:

> *(c) whether any other planning, assessment or approval processes are applicable or relevant to the action and have already considered and provided for the avoidance, mitigation or repair of any impact or damage as part of those processes.*

Make minor amendments to the MNES Standard:

- add 'appropriate measures' in Steps 1, 2 and 3 - at clauses 8(2)(3) and (4);
- add 'if possible' in clauses 8(3) and (4).

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		development within a specific lot rather than on other land outside the lot boundary. For example, processes to zone or subdivide land for development, undertaken as part of an orderly planning law framework, may have including a requirement to excise and reserve areas of land with the most valuable vegetation, leaving a smaller and more constrained development envelope in the referred proposal which has limited scope (if any) for further avoidance and mitigation measures. Government must align the MNES standard and Policy Paper with the EPBC Act - ensure that avoidance and mitigation measures are not mandatory pre-requisites as steps that must be result in actions – before offsets can be applied.	
	Lapsing of non-controlled action decision hold up housing. **Risk:** if not substantially commenced in 5 years housing projects will be sent back to the beginning of a long process.	A decision that an action is not a controlled action will cease to be in force if the action has not substantially commenced within 5 years of the decision date. This is far from an appropriate period of time, in circumstances of major project development. There are numerous internal and external factors that influence the timing of project implementation. Legal certainty as to the application of the EPBC Act to an activity is critical to investment decision making. If retained, at a minimum, this timeframe should be 10 years with a statutory avenue to seek an extension of this timeframe. Drafting Guidance: Replace "fifth anniversary" with "tenth anniversary" at new section @79F(1). Insert new provision at section @79F allowing for further extensions of the period of time that a not a controlled action is in force. For example, new subsection (4): *"Irrespective of subsections (1) and (3), the Minister may extend the period in which a not a controlled action is in force if the Minister considers it appropriate to do so."*	*Example Drafting (Environment Protection Reform Bill 2025)* **Increase the lapsing date for the decision and/or allow fro extension of the decision under s79F:** *79F Lapsing of decision that action is not a controlled action* *(1) A decision under section 75 that an action is not a controlled action ceases to be in force, on the [tenth] anniversary of the date of the notice of the decision under section 77, or if the Minister has issued an extension under subsections (4) or (6), that date, if the taking of the action has not substantially commenced before that anniversary.* *(2) Subsection (1) applies regardless of whether the decision was made because the Minister believed the action would be taken in a particular manner.* *(3) If a decision under section 75 ceases to be in force because of subsection (1), the action is taken never to have been referred to the Minister.*

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			(4) The Minister may, by written notice, extend the lapsing date for a decision under section 75, if in the Minister is satisfied it is appropriate to do so. *(5) Prior to the lapsing date in subsection (1) or (4), a person proposing to take an action may request an extension to the lapsing date. An application under this subsection must outline the reasons for the request.* *(6) Upon receiving a request under subsection (5), the Minister must decide whether or not to approve the request and give written notice of the decision, with the revised lapsing date, if applicable, to the person proposing to take the action.*
	New streamlined assessment process undermined by RFI's. Current delays in assessments can be significantly reduced if Proponents have details of the information required with the application and RFI's are kept to a minimum. Posting reasons for Requests for Information (RFi's), will not impact timelines for assessment as there is no impact for (or consideration of), inappropriate reasons.	Relevant provisions: Bill cl171-173 (s76). The 'streamlining' aspects of the new assessment process include a new requirement for reasons to be published for requests for further information (RFIs), the current obligation to refer matters to other Ministers is made discretionary, and the option to order an inquiry is removed. Otherwise, the process appears similar to aspects of the three removed assessment processes, but the **proponent's obligation to provide relevant assessment information is brought forward, to referral stage.** **It is not clear that the bringing forward of the timing for provision of information will, in itself, streamline the process.**	**Amend s76 to ensure the second and subsequent RFI's must be with the consent of the proponent with the option to escalate to the Minister or proceed without the RFI:** Amend section 76(1), (3) and (4) to clarify that these provisions relate to a single request from the Minister (the first request) which may only be made once. Include a **new subsection which deals with subsequent requests for information**, for example new subsection (7A): *"(7A) The Minister may, following the receipt of information provided in response to the request under subsection (1), (3) or (4), make further requests for information to the person proposing to take an action (a further request), where:*

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	Risk: **Assessments won't be streamlined and housing will continue to be delayed** without a limit on RFIs and stop the clocks.	If assessing officers have questions about the completeness of the information provided at referral, repeated RFIs (and associated 'stop the clocks') have the potential to stretch the assessment process out so that it is no more streamlined than the current process. Repeated requests for further information and stock the clock processes are a significant cause of delays –, There is no control on how many requests can be made or how often 'stop the clock' can be applied. To truly streamline the process, there must be stronger guardrails applied to the RFI process that are within the proponent's control, including for the second and subsequent RFI's: • a requirement that the proponent agree to a proposed RFI (in most cases agreement is likely to be given to maximise the likelihood of approval and to avoid the EIS process); and • a right for a proponent to elect that the proposed RFI being escalated to the decision maker.	*a) the Minister is satisfied the further information is reasonably necessary to make the decision for which it was requested;* *b) the Minister has given [reasonable OR not less than 14 days] notice to the person of the Minister's intention to make a further request; and* *c) the person proposing to take the action consents in writing to the Minister making the further request."* Include a **new subsection that deals with situations where the person proposing to take the action does not consent** to the further request: *"(7B) If the person proposing to take the action does not consent to the Minister making the further request under section 7A(c), the person may:* *a) where the request has been made by a delegate of the Minister, request that the Minister determine whether or not the further request is reasonably required to make the relevant decision; or* *b) request that the relevant decision be made without the information that would have been the subject of the further request."* *"(7C) If, following the process under section 7B(a), the Minister determines the further request is reasonably required to make the relevant decision, the person proposing to take the action must either:* *a) consent in writing to the further request being made; or* *b) request that the relevant decision be made without the information that would have been the subject of the further request."*

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	The NEPA independence cannot impinge on Minister's Expectations for delegated functions. **Risk: Full independence reduces public accountability** and introduces a risk that NEPA and CEO may act otherwise than in accordance with government intention. Additionally, there is concern the CEO and NEPA may not appropriately consider and weigh up all objects of the Act, particularly the various principles of ecologically sustainable development.	Clear guardrails should be established for the operation of the NEPA and the position of the CEO. The Proposed EPBC Act makes it clear that the EPA CEO is independent on any compliance and penalty issues but must act under direction of the Minister for any delegated powers or functions related to assessments and approvals (S515AAA EPBC Act). In a conflict of legislation, the EPA Act unintentionally implies that the EPA cannot be directed by the Minister on delegated powers and functions in contravention of the Act. **This is a fundamental premise of good governance – lack of accountability and transparency encourages poor decisions, no matter how disciplined the organisation is to start.**: • Legislation should include provisions that ensure the CEO (and by extension the NEPA) is required to act in accordance with the expectations and objectives of the Minister set out in the Statement of Expectations and have their performance reviewed against these (see suggested drafting for section 16(1) of the NEPA Bill). • Legislation should clarify that the independence of the CEO does not extend to when the CEO is acting as the delegate of the Minister or another body (see suggested drafting for section 14(2) of the NEPA Bill).	***Example Drafting (National Environmental Protection Agency Bill 2025)*** **Amend sections of the EPA Act to clarify independence (s14), statement of expectations (s16(2)), to confirm at the end of each, that the Minister can provide instruction to the CEO on delegated powers and functions:** *"except for powers and functions delegated by the Minister or other delegators."* **The CEO response (s17(2) should add that the CEO must address the Minister's instruction to the CEO on delegated powers and functions:** *"(c) specifically address any expectations related to powers and functions delegated by the Minister."* **Minister to guide the EPA CEO in balancing economic and social issues with the environmental for any delegated powers and functions only:** *515AAA Delegation to CEO or member of staff of NEPA* … *Directions to delegates* *(5) A delegate is, in the exercise or performance of a delegated power or function, subject to the directions of the delegator.* *(6) Without limiting subsection (5), the Minister may give written directions to a delegate as to how the delegate is to approach, balance or weigh the considerations for approvals and conditions under Subdivision B of Division 1 of Part 9.*

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The NEPA and its CEO need accountability and transparency on delegated functions

The current EPA Act does not have any way to review or terminate the CEO for poor performance on delegated functions.

Risk: **Lack of accountability on NEPA will invite criticism and risk poor NEPA performance.**

The Minister should have the ability to hold the CEO (and by extension, the NEPA) to account, e.g. to address failures to meet statutory timeframes, poor administration of the NEPA, or to re-dress major bias (see suggested drafting for section 52(2) of the NEPA Bill).

In a conflict of legislation, the EPA Act unintentionally implies that the EPA cannot be directed by the Minister on delegated powers and functions in contravention of the Act.

Inadvertently, the Proposed EPBC Act does not give the Minister (or any other authority), the ability to review performance on delegated powers and functions during the tenure of the EPA CEO – this would mean the EPA CEO could not be directed, reviewed or managed in relation to powers that are merely delegated – this is authority we would not give to an elected official much less an agency.

Equally, there is no circumstance in which the EPA CEO can be terminated for professional misconduct or professional non-performance of any kind during their tenure.

We agree that an independent EPA needs to be able to act without political pressure; however, that does not mean there should be no accountability nor transparency on EPA and CEO actions.

This is a fundamental premise of good governance – lack of accountability and transparency encourages poor decisions, no matter how disciplined the organisation is to start.

Government should have the power to remove the CEO for failure to meet statutory requirements, demonstrable failure to consider the Minister's Statement of Expectations, or maladministration.
Drafting Guidance:
Provide an avenue for recourse if a review finds that the CEO has not acted in accordance with the objectives set out in any Statement of Expectations or a Ministerial direction. For example, it may form a

Amend the Termination of Appointment clause (s52) to insert that the CEO can be terminated for professional non-performance on delegated powers & functions:

"(aa) for poor performance of the CEO against any requirements, objectives, metrics or directions given by the Minister or provided in this Act or any other Act or the regulations, or provided in any instrument of delegation in relation to any delegated functions or powers."

Amend s61 Periodic reviews of NEPA (s61(3 to 5) to allow for review every year against delegated responsibilities:

"Frequency of reviews

(3) The first review must be completed within 12 months after the commencement of this section (the first review).

(4) The second review must be completed within 3 years after the completion of the first review (the second review).

(5) The third review must be completed within 2 years after the completion of the second review (the third review).

(6) Each subsequent review must be completed within 5 years after the completion of the previous review.

(7) Notwithstanding subsections (3) – (6), a review must be completed no later than 3 months prior to the expiry of the period referred to in section 45(5)."

Amend s61 Periodic reviews of NEPA (s61(2)(c) to include a review of performance on delegated responsibilities:

"(d) whether, and to what extent, the CEO and NEPA have complied with or delivered against any requirements, objectives, metrics or directions given by the Minister, or provided in this Act or any other Act or the regulations, or

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		ground for termination of the CEO (see suggested drafting for section 52(2) of the NEPA Bill).	*provided in any instrument of delegation in relation to any delegated functions or powers."*
	Balancing environmental, social and economic considerations for Assessments. Assessments under the EPBC Act must consider the principles of ecologically sustainable development, which requires proper balancing of environmental, social and economic considerations. There is no indication of how this will be done under the Act. Risk: **Failure to properly consider social and economic factors, and government priorities, will undermine projects and hold back delivery of housing.**	An independent entity solely focused on environmental protection is not well-placed to undertake this balancing of considerations. Government may need to provide direction on how to assess proposals in line with strategic national priorities. The DCCEEW environmental experts are understandably, not economic or social policy experts and require government guidance and support to balance the environmental, economic and social functions. DCCEEW has previously confirmed they do not as a rule consider economic and social issues in assessments, instead relying on these issues to be dealt with by Government (through regional plans, strategic plans or other decision-making options. There is nothing in the Act which gives DCCEEW this necessary support and it is clear that the balance has not been well supported under the existing rules. The Minister should **issue a direction about how the CEO must balance strategic national priorities** that the CEO must follow in its delegated assessment role. (See Column 3, Option 2 Alternative drafting) Alternatively, the **CEO could be required to consult with the Minister before making a decision and then take into account the Minister's response on strategic national priorities** when making a decision. (See Column 3 Option 3 Alternative drafting).	***Example Drafting (Environment Protection Reform Bill 2025)*** **Minister to guide the EPA CEO in balancing economic and social issues with the environmental for any delegated powers and functions only:** **Option 1 – Alternative Drafting** *515AAA Delegation to CEO or member of staff of NEPA* *...* *Directions to delegates* *(5) A delegate is, in the exercise or performance of a delegated power or function, subject to the directions of the delegator.* *(6) Without limiting subsection (5), the Minister may give written directions to a delegate as to how the delegate is to approach, balance or weigh the considerations for approvals and conditions under Subdivision B of Division 1 of Part 9.* **Option 2 – Alternative Drafting** *515AAA Delegation to CEO or member of staff of NEPA* *...* *Directions to delegates* *(5) A delegate is, in the exercise or performance of a delegated power or function, subject to the directions of the delegator.* *(6) Without limiting subsection (5), the Minister may, in delegating any of the Minister's powers or functions under this Act:* *(a) require the delegate to consult with the Minister prior to exercising the delegated power or function; and* *(b) take into account any guidance provided by the Minister in exercising the delegated power or function.*

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Regular review of NEPA performance on delegated responsibilities.

As a new entity with a critical role to play in major investments in Australia, it is important that government regularly reviews performance of the CEO / NEPA, especially during the initial period of establishment.
Risk: Poor CEO / NEPA performance may result in longer, more uncertain assessment and approval timeframes and risk project viability.

The NEPA should have an interim review periods established for the first 5-year cycle to build confidence in its operation, both within and outside of the agency (see suggested drafting for section 61 of the NEPA Bill)

Reviews should be undertaken by the Auditor-General.

The review should be completed and published at least three months prior to the expiry of the CEO's term. Reappointment of the CEO should be linked to the review process.

The period of appointment should be reduced to 3 years, and the CEO should be able to be reappointed twice.

Provide for mandatory reviews by the Auditor-General at year 1, 3 and 5, and thereafter at a 5 yearly cadence.

Provide that a review is required at least three months prior to the expiry of the CEO's term- **initiated by the Minister, so the CEO is not reviewing themselves.**

Example Drafting (National Environmental Protection Agency Bill 2025)

45 Appointment of the CEO
...
Period and basis of appointment

(3) The CEO is to be appointed on a full-time basis.

*(4) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 3 years (**term**).*
(5) The CEO must not be reappointed for more than two consecutive terms.

61 Periodic reviews of the administration of NEPA:
Requirement to conduct reviews
(1) The Minister must cause independent reviews of the CEO and the administration of NEPA to be conducted by the Auditor-General in accordance with this section.
Matters review must consider
(2) Without limiting subsection (1), a review must consider, in relation to the period since the previous review was completed under this section:

- *(a) whether, and to what extent, the CEO and NEPA has supported the delivery of accountable, efficient, outcomes-focused and transparent environmental regulatory decision-making; and*
- *(b) whether, and to what extent, the CEO and NEPA have met the expectations and objectives set out in any statements of expectations given by the Minister in the period; and*
- *(c) whether, and to what extent, the CEO and NEPA have acted consistently with a statement of intent given by the CEO in the period; and*
- *(d) whether, and to what extent, the CEO and NEPA have complied with any Ministerial direction; and*
- *(e) whether, and to what extent, the CEO has diligently and efficiently performed the functions and exercised the powers conferred on the CEO under this Act or any other Act; or*
- *(f) whether, and to what extent, there has been significant delay in the performance of any function or exercise of any power conferred on the CEO under this Act or any other Act; and*

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(g) whether, and to what extent, any decision made by the CEO in the performance of any function or exercise of any power conferred on the CEO under this Act or any other Act may have been affected by actual or apprehended bias; and.

(h) any other matters the Minister directs the review to consider.

Frequency of reviews

*(3) The first review must be completed within 12 months after the commencement of this section (the **first review**).*

*(4) The second review must be completed within 3 years after the completion of the first review (the **second review**).*

*(5) The third review must be completed within 2 years after the completion of the second review (the **third review**).*

(6) Each subsequent review must be completed within 5 years after the completion of the previous review.

(7) Notwithstanding subsections (3) – (6), a review must be completed no later than 3 months prior to the expiry of the period referred to in section 45(4).

(8) For the purposes of subsections (3) and (7), a review is completed on the day after the day the report of the review is given to the Minister.

Report of review

(9) The Auditor-General must give the Minister a written report of the review.

(10) As soon as practicable after the Minister receives the report, the Minister must arrange for.

(a) a copy to be given to the CEO; and

(b) a copy to be published on the Department's website.

(11) The Minister must also arrange for a copy of the report to be tabled in each House of the Parliament, within 15 sitting days of that House after the Minister receives the report.

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			Response to recommendations *(12) If the report includes recommendations, the CEO must:* *(a) prepare a response to each recommendation, as soon as 7 practicable after receiving a copy of the report from the Minister; and* *(b) arrange for the response to be tabled in each House of the 10 Parliament, within 6 months of the day a copy of the report is tabled in that House; and* *(c) publish the response on NEPA's website, as soon as practicable after a copy of the report is first tabled in a House of the Parliament.*

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